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CLEARINGHOUSE RULE 94-176

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Under the law that existed prior to 1993 Wisconsin Act 97, if a perpetrator of a crime is sentenced to state prison, the victim, a family member of the victim, if the victim died as a result of the crime, or parent or guardian of a child victim of crime, may provide a written statement that must be considered by the Parole Commission when it decides whether to grant to the perpetrator a release on parole [s. 304.06 (1), Stats.]. Current administrative rules of the Parole Commission make no mention of this authority, perhaps because the authority and related procedure is clearly spelled out in the statutes. Clearinghouse Rule 94-176 proposes a rule that establishes a procedure to allow a victim of certain specified crimes to have “direct input” in the parole decision-making process. Promulgation of these rules is required by s. 304.06 (1) (em), Stats., as created by 1993 Wisconsin Act 97.

Because Clearinghouse Rule 94-176 deals only with the procedure for “direct input” into the Parole Commission’s decision-making process, consideration should be given to expanding the scope of the rule to cover the current process whereby crime victims are authorized to influence the Parole Commission’s decision-making process by the submission of written statements. Although the statutory provisions setting forth the procedures for submitting written statements are sufficiently detailed to eliminate the necessity of administrative rules, the absence of any reference to this alternative may mislead the public into thinking that the direct input process is the only means by which a victim may attempt to influence the parole process. Thus, the failure to reference this alternative in the Administrative Code may actually encourage direct input by telephone or in person, rather than submission of a written statement. It is doubtful that the Parole Commission, by the adoption of Clearinghouse Rule 94-176, intends to discourage the submission of written statements and encourage direct input.

b. The terms defined in s. PAC 1.03 (8) and (11) should be lower-case letters, except for the first letter of each term. Also, “means” should replace “is” in the first sentence of s. PAC 1.03 (11).

c. In s. PAC 1.03 (13), “as defined in s. 304.063 (1) (b), Stats.” should be deleted since “member of the family” is defined in the rule.

d. The definition of “parole eligibility notification system” in s. PAC 1.03 (11) should end with the period at the end of the first sentence because the next two sentences of the definition contain substantive concepts that are inappropriate to a definition. The inclusion of these substantive provisions in the definition appears to be based on the misunderstanding of the purpose of a definition in an administrative rule or statutory provision. In general, definitions should merely specify the meaning of a term that is used throughout an Administrative Code chapter or provision to avoid the repetitive use of the term. Definitions should not specify legal requirements or serve other purposes. [See s. 1.01 (7), Manual.] Also, the word “shall,” rather than “will,” should be used in those sentences if they are stating requirements.

e. If a definition of a term is created, the term should be used consistently throughout a rule. The word “direct” should be placed before “input” in s. PAC 1.06 (9) (b) 2 and 4.